

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

IN RE:	§	
	§	CASE NO. 21-30071-HCM
THE GATEWAY VENTURES, LLC	§	CHAPTER 11
	§	
	§	HEARING DATE:
DEBTOR	§	May 26, 2021, 1:30 PM

**OBJECTION OF THE UNITED STATES TRUSTEE TO MOTION OF DEBTOR (I)
TO FILE SUN CAPITAL PURCHASE SALE AGREEMENT UNDER SEAL AND (II)
FOR RELATED RELIEF**

COMES NOW, KEVIN M. EPSTEIN, THE UNITED STATES TRUSTEE for Region 7 (the “UST”), through the undersigned counsel, and files this objection to Motion of the Debtor (I) to File Sun Capital LLC Purchase Sale Agreement Under Seal and (II) For Related Relief (the “Motion”) (Dkt. # 50) and respectfully represents as follows:

PRELIMINARY STATEMENT

1. The Debtor has filed a motion seeking Court authority to sell certain real estate. Dkt. #49. The Debtor also filed the Motion seeking to seal the real estate purchase agreement (the “PSA”). Debtor has cited no authority for the relief requested. Rather, Debtor seeks to “keep the purchase price and/or other information contained in the PSA confidential because of the sensitive nature of the information.” Bankruptcy Code section 107 codifies the presumption of public

access and any paper filed in a case is presumed to be open to examination by an entity at reasonable times without charge. Absent a compelling need to protect trade secrets or other proprietary information, a motion to seal should be denied. The purchase price of a contract is the most basic and important information for a party to determine whether a sale is in the best interests of creditors and the estate. Debtor has not explained in the Motion how the public disclosure of the purchase price will cause harm. Unless the Debtor is selling the property for a below market price, the disclosure of the purchase price should cause no harm. As a party engaged in monitoring Chapter 11 cases, the UST objects to the Debtor's attempt to seal the purchase price of the PSA and requests the Court to deny the Motion.

RESPONSE TO ALLEGATIONS IN THE MOTION

2. The UST admits the allegations contained in paragraphs 1 through 12 of the Motion.
3. The UST admits the allegations contained in paragraph 13 of the Motion but denies that the Debtor should be allowed to seal the purchase price of the PSA.
4. The UST denies the remaining allegations contained in the Motion.

ARGUMENT

A. The Debtor Has Not Met Its Burden That The Purchase Price Under the PSA Should Be Sealed.

5. Section 107 of the Bankruptcy Code codifies a presumption of public access, and any paper filed in a case under title 11 is presumed to be "open to examination by an entity at reasonable times without charge." 11 U.S.C. § 107. Any paper filed in a bankruptcy case is subject to section 107; therefore, the question of whether a document is a judicial record does not arise under section 107. *Gitto v. Worcester Tel. & Gazette Corp. (In re Gitto Global Corp.)*, 422 F.3d 1, 7, 9-10 (1st Cir. 2005).

6. Broad public access to documents filed in bankruptcy court fosters transparency in, and integrity of, the bankruptcy process. Public access to judicial records “is of special importance in the bankruptcy arena, as unrestricted access to judicial records fosters confidence among creditors regarding the fairness of the bankruptcy system.” *Gitto*, 422 F.3d at 7 (citing *In re Cranford*, 194 F.3d 954, 960 (9th Cir. 1999)). “During a chapter 11 reorganization, a debtor's affairs are an open book and the debtor operates in a fish bowl.” *In re Alterra Healthcare Corp.*, 353 B.R. 66, 73 (Bankr. D. Del. 2006) (citations omitted).

7. But the presumption of public access is not absolute. Section 107 includes exceptions for protecting an entity's trade secrets and other confidential commercial information, for protecting persons from scandalous or defamatory matters, and for protecting an individual's information that may pose an undue risk of identity theft or other unlawful injury. A motion under Rule 9018 is the mechanism for a party seeking to invoke the protections of section 107. Nevertheless, a “court's ability to limit the public's right to access remains an extraordinary measure that is warranted only under rare circumstances as ‘public monitoring is an essential feature of democratic control.’” *In re Anthracite Capital, Inc.*, 2013 WL 1909026, at *3 (Bankr. S.D.N.Y. May 9, 2013) (quotation omitted).

8. The Debtor will likely argue that creditors have been given access to the information under non-disclosure agreements and do not object to sealing the information. The Fifth Circuit recently rejected a “consensual” sealing of a record. *Le v. Exeter Fin. Corp.* 990 F.3d 410 (5th Cir. 2021). The Fifth Circuit held that it is the Court's duty to promote transparency. *Id.*

9. It appears that the sole basis for the Motion is the Debtor's desire not to divulge information that it would not have divulged outside of bankruptcy. The UST asserts that the Debtor desire to not divulge a purchase price for a proposed sale of property is not sufficient for the

extraordinary remedy sought in the Motion. Thus, the UST requests the Court deny the Motion and require the Debtor to disclose the purchase price under the PSA.

WHEREFORE, the UST respectfully requests that the Court deny the Motion and for other and further relief the Court deems just and appropriate.

Dated: May 24, 2021

Respectfully submitted,

KEVIN M. EPSTEIN
UNITED STATES TRUSTEE
REGION 7

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served upon the parties listed on the attached Service List by United States Mail, first class, postage prepaid, and/or by electronic means for all Pacer system participants on this the 24th day of May, 2021.

/s/ James W. Rose, Jr.
James W. Rose, Jr.

Label Matrix for local noticing
0542-3
Case 21-30071-hcm
Western District of Texas
El Paso
Mon May 24 11:06:25 CDT 2021

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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

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End of Label Matrix	
Mailable recipients	35
Bypassed recipients	0
Total	35